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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,737	11/29/2000	Peter Joseph Giacomini	500-002US	9624

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DEMONT & BREYER, LLC
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EXAMINER

VU, THONG H

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/725,737

Applicant(s)

GIACOMINI ET AL.

Examiner

Thong H. Vu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,9,11,12,15,16,22-25,27,28,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,9,11,12,15,16,22-25,27,28,31 and 32 is/are rejected.
- 7) ☒ Claim(s) 3-7,10,13,14,17-21,26, 29 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

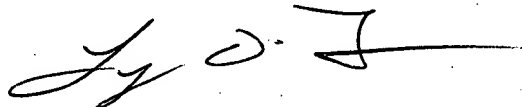
- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-32 are pending.
2. In view of the Appeal Brief filed on 1/08/2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



Response to Arguments

LYNN FEILD
SUPERVISORY PATENT EXAMINER

A. Claims 1 and 8:

Applicant argues Tran does not teach or suggest "populating a cache with a resource only when at least i request for said resource have been received".

Examiner points out the Prior art taught "requests for access may be anticipated before, after or while an access request is made" [Tran, col 1 lines 66]. It's clear that the cache populating with a resource when the request for said resource have been received.

Applicant argues the i request is greater than one. Examiner point outs Claims recite an integer value which may be zero, one and occasionally greater than 1. Hence, if $i=0$ the admitted prior art and recited art disclosed preloading the cache and therefore

anticipate the rejected claims. When $i=1$, the admitted prior art disclosed the resource is loaded as taught in Fig 3, step 305-309.

B. Claim 15 and 24:

Applicant argues Tran does not teach or suggest “populating a cache with a resource only when at least i request for said resource have been received”.

Examiner points out the Prior art taught “requests for access may be anticipated before, after or while an access request is made” [Tran, col 1 lines 66]. It’s clear that the cache populating with a resource when the request for said resource have been received.

Applicant argues the i request is greater than one. Examiner point outs Claims recite an integer value which may be zero, one and occasionally greater than 1. Hence, if $i=0$ the prior art preloading discloses the admitted and art cited anticipated these. When $i=1$, the admitted prior art disclosed the resource is loaded as taught in Fig 3, step 305-309.

Thus, the rejection sustained.

Claim Rejections - 35 USC § 112

3. Claims 2,9,16,25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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i.e.: i is an integer and greater than one (= two or more, or variable, claims 1,8,15,24) versus i is invariant (claims 2,9,16,25). The specification teaches these as alternative embodiments since claim 1 clearly recited i is variable by reciting the i is occasional greater than 1. It can't be invariant.

Allowable Subject Matter

4. Claims 3-7,10,13,14,17-21,26,29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,8,11,12,15,22-24,27-28 and 31-32 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tran et al [Tran, 7,039,683 B1] or admitted prior art.

5. As per claim 8, Tran discloses a data processing system comprising:

a cache for storing a resource [Tran, cache value, col 4 lines 25-42] ; and a processor for populating said cache with said resource only when at least i requests for

said resource have been received [Tran, network with access requestor and resources, Fig 4; before, after or while an access request is made, col 1 lines 66]; wherein i is an integer and is at least occasionally greater than one [Tran, the software may calculate a cache value based on number of requests, col 4 lines 25-42].

6. Claims 1,15,24 contain the similar limitations set forth of apparatus claim 8.

Therefore, claims 1,15,24 are rejected for the similar rationale set forth in claim 8.

7. As per claims 11,27 Tran discloses said cache is populated with said resource only when at least i request for said resource have been received within an elapsed time interval, At , as inherent feature of the number of requests via network.

8. As per claims 12 and 28 Tran discloses the duration of said elapsed time interval, At , is based on the value of i as inherent feature of the number of requests via network.

9. As per claims 22,23,31,32 Tran discloses said computer network is a hierarchical computer network and said first node has m filial nodes [Tran, a network with access requestor and resources, Fig 4; before, after or while an access request is made, col 1 lines 66]; wherein said cache is populated with said resource only when at least one request for said resource has been received from at least n of said m filial nodes; and wherein m is an integer greater than one, n is an integer greater than one, and $m \geq n$ [Tran, the software may calculate a cache value based on the number (more than one) of requests, col 4 lines 25-42].

Claims 1,8,11,12,15,22-24,27-28 and 31-32 are rejected under 35 U.S.C. § 102(e) as being anticipated by Chamberlain et al [6,408,360 B1]

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10. As per claim 15 Chamberlain discloses, in Fig 6, A method comprising:
receiving at a first node in a computer network at least one request for a resource;
retrieving said resource from a second node in said computer network [Chamberlain, the request and subsequent request, col 2 lines 34-60]; and
populating a cache in said first node with said resource only when at least i requests for said resource have been received at said first node [Chamberlain, last modified, latest modification, col 2 lines 34-60];
wherein i is an integer and is at least occasionally greater than one [Chamberlain, other request to be tested, col 14 lines 19-26].

11. As per claim 24 Chamberlain discloses A first node in a computer network, said first node comprising:
a cache [Chamberlain, Fig 4, cache 304];
at least one receiver for receiving at least one request for a resource [Chamberlain, the request and subsequent request, col 2 lines 34-60]; and
a processor for retrieving said resource from a second node in said computer network [Chamberlain, Fig 4, HTTPserver 206], and for populating said cache in said first node with said resource only when at least i requests for said resource have been received at said first node [Chamberlain, last modified, latest modification, col 2 lines 34-60];
wherein i is an integer and is at least occasionally greater than one [Chamberlain, other request to be tested, col 14 lines 19-26].

12. As per claim 8, Chamberlain discloses a data processing system comprising:

a cache for storing a resource [Chamberlain, Fig 4, cache 304]; and a processor for populating said cache with said resource only when at least i requests for said resource have been received [Chamberlain, Fig 4, HTTPserver 206]; wherein i is an integer and is at least occasionally greater than one [Chamberlain, other request to be tested, col 14 lines 19-26].

13. Claim 1, contains the similar limitations set forth of apparatus claim 8. Therefore, claim 1 is rejected for the similar rationale set forth in claim 8.

14. As per claims 11,27 Chamberlain discloses said cache is populated with said resource only when at least i request for said resource have been received within an elapsed time interval, At , as inherent feature of the number of requests via network.

15. As per claims 12 and 28 Chamberlain discloses the duration of said elapsed time interval, At , is based on the value of i as inherent feature of the number of requests via network.

16. As per claims 22,23,31,32 Chamberlain discloses said computer network is a hierarchical computer network and said first node has m filial nodes; wherein said cache is populated with said resource only when at least one request for said resource has been received from at least n of said m filial nodes; and wherein m is an integer greater than one, n is an integer greater than one, and $m \geq n$ [Chamberlain, LAN,WAN, Internet, col 6 lines 5-10].

Claims 1,8,11,12,15,22-24,27-28 and 31-32 are rejected under 35 U.S.C. § 102(e) as being anticipated by Teoman et al [6,463,509 B1].

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17. As per claim 15 Teoman discloses A method comprising:

receiving at a first node in a computer network at least one request for a resource [Teoman, compares the request against a directory of the content of user cache, col 2 line 63];

retrieving said resource from a second node in said computer network [Teoman, data is retrieved from mass storage, col 9 line 23]; and

populating a cache in said first node with said resource only when at least i requests for said resource have been received at said first node [Teoman, preload and responsive caching, col 9 lines 15-38; preloading all file have been accessed, col 15 lines 24-50]; wherein i is an integer and is at least occasionally greater than one [Teoman, test memory, Fig 12].

18. As per claim 24 Teoman discloses A first node in a computer network, said first node comprising:

a cache [Teoman, cache 25, Fig 1];

at least one receiver for receiving at least one request for a resource [Teoman, server 29, Fig 1]; and

a processor for retrieving said resource from a second node in said computer network [Teoman, processor, col 4 lines 1-8], and for populating said cache in said first node with said resource only when at least i requests for said resource have been received at said first node [Teoman, preload and responsive caching, col 9 lines 15-38; preloading all file have been accessed, col 15 lines 24-50];

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wherein i is an integer and is at least occasionally greater than one [Teoman, test memory, Fig 12].

19. As per claim 8, Teoman discloses a data processing system comprising:

a cache for storing a resource [Teoman, cache 25, Fig 1]; and a processor for populating said cache with said resource only when at least i requests for said resource have been received [Teoman, preload and responsive caching, col 9 lines 15-38; preloading all file have been accessed, col 15 lines 24-50]; wherein I is an integer and is at least occasionally greater than one [Teoman, test memory, Fig 12].

20. Claim 1, contains the similar limitations set forth of apparatus claim 8. Therefore, claim 1 is rejected for the similar rationale set forth in claim 8.

21. As per claims 11,27 Teoman discloses said cache is populated with said resource only when at least i request for said resource have been received within an elapsed time interval, A_t , as inherent feature of the number of requests via network.

22. As per claims 12 and 28 Teoman discloses the duration of said elapsed time interval, A_t , is based on the value of i as inherent feature of the number of requests via network.

23. As per claims 22,23,31,32 Chamberlain discloses said computer network is a hierarchical computer network and said first node has m filial nodes; wherein said cache is populated with said resource only when at least one request for said resource has been received from at least n of said m filial nodes; and wherein m is an integer greater than one, n is an integer greater than one, and $m \geq n$ [Teoman, LAN,WAN, Internet, col 4 line 45-50].

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong H. Vu whose telephone number is 571-272-3904. The examiner can normally be reached on 6:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Lynn Feild* can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thong Vu
Primary Examiner

A handwritten signature in black ink, appearing to read 'Thong', with a horizontal line underneath.

THONG VU
PRIMARY PATENT EXAMINER